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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------|-------------|----------------------|---------------------|------------------|
| 10/648,494 | 08/25/2003 | Etan S. Chatlynne | ETH-5040 | 4244 |
| 67395 | 7590 | 08/07/2007 | EXAMINER | |
| GREENBERG TRAURIG, LLP | | | ADAMS, AMANDA S | |
| 200 PARK AVE. | | | ART UNIT | PAPER NUMBER |
| P.O. BOX 677 | | | 3731 | |
| FLORHAM PARK, NJ 07932 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 08/07/2007 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/648,494 | CHATLYNNE ET AL. | |
| | Examiner | Art Unit | |
| | Amanda Adams | 3731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 May 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-8, 10-23, 29-32, 34, 35 and 37-46 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 10-23, 35, 37, 38, 42, 43 and 46 is/are allowed.
- 6) Claim(s) 39 and 44 is/are rejected.
- 7) Claim(s) 2-8, 29-32, 34, 40, 41 and 45 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 44 is rejected under 35 U.S.C. 102(b) as being anticipated by Mayzels et al (US 5,269,791).

3. Mayzels discloses the invention substantially as claimed including a winding means for winding the suture around the helical member in a helical path such that the suture is attached to at least one turn of the helical member (col. 3, lines 9-12), guiding means for guiding the winding of the suture in the helical path (col. 3, lines 13-15), and supporting means for supporting the coiled helical member during the winding of the suture around the helical member (figs. 1-3 [12]).

4. Claim 44 is rejected under 35 U.S.C. 102(b) as being anticipated by Kay (US 5,662,683).

5. Kay discloses the invention substantially as claimed including a winding means capable of winding a suture or cord around a helical member in a helical path such that the suture is attached to at least one turn of the helical member (fig. 6), and a supporting means for supporting the helical member during the winding of the suture around the helical member (fig. 7 [42]).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mayzels et al (US 5,269,791) in view of Nobles (US 5,820,631).

3. Regarding claim 39, Mayzels discloses the method substantially as claimed including comprising the steps of supporting a helical member ([16]) relative to a winding tube ([12]), and having the suture wound about the helical member in a helical path so that the suture is attached to at least one turn of the helical member (fig. 1). Mayzels does not disclose that the winding tube is moved relative to the helical member. However, Nobles teaches that a winding tube is moved relative to a helical member in the steps of attaching the suture to the helical member (col. 3, lines 15-19). Moving the winding tube relative to the helical member would allow more precise winding of the suture about the helical member and would prevent unwanted contact of the suture and the surgeon's hands, which could cause tissue tears in the hands of the surgeon. Therefore it would have been obvious to have the winding tube move relative to the helical member.

Allowable Subject Matter

4. Claims 10-23, 35, 37, 38, 42, 43, and 46 are allowed.
5. None of the prior art, alone or in combination meets all of the limitations of the independent claims 42, 43, and 46. The prior art of Bolduc (US 5,824,008) teaches gears operated by an actuator, however the winding tube would no longer be moveable in an axial direction in response to its rotation if these gears were added to the device of Kay. The prior art of Mayzels et al teaches a manual means for winding, and does not have the structure of the winding means as disclosed in these allowable claims. The prior art of Nobles does not disclose the guide means and coiled helical member as separate components of the device.
6. Claims 40 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. None of the prior art, alone or in combination, discloses all of the limitations of claim 40. The closest prior art of Bolduc et al (US 5,824,008) teaches gears operated by an actuator, however the winding tube would no longer be moveable in an axial direction in response to its rotation if these gears were added to the device of Kay.
8. Claims 2-8, 29-32, 34, and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. None of the prior art, alone or in combination, discloses all of the limitations of claims 34 or 45.

10. Regarding claim 34, the closest prior art of Bolduc et al (US 5,824,008) teaches gears operated by an actuator, however the winding tube would no longer be moveable in an axial direction in response to its rotation if these gears were added to the device of Kay.

11. Regarding claim 45, none of the prior art is combinable with that of Mayzels or Kay. There is no reason to add an additional tubular member with a spiral member at the end thereof to the supporting means and helical member of Mayzels et al.

Response to Arguments

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

13. Claims 42, 43, 46, and their depending claims are still considered to be allowable. However, new rejections have been made with respect to claims 39 and 44. Specifically regarding claim 44, the subject matter previously indicated as allowable was incorrectly specified in the previous office action, and is found in both claims 45 and 29. Therefore this office action is a non-final rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Adams whose telephone number is (571) 272-5577. The examiner can normally be reached on M-F, 8:00am-5:00pm, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ASA ASA 8/6/07

Tan-uyen Ho
(JACKIE) TAN-UYEN HO
SUPERVISORY PATENT EXAMINER

8/6/07